

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC M. WATKINS, No. C 10-3802 CW (PR)  
Petitioner, ORDER OF TRANSFER

v.

KELLY HARRINGTON, Warden,  
Respondent.

ERIC M. WATKINS, No. C 10-3803 CW (PR)  
Petitioner, ORDER OF DISMISSAL

v.

A. HEDGPETH, WARDEN HARRINGTON,  
Respondents.

BACKGROUND

Petitioner Eric M. Watkins, a state prisoner incarcerated at Kern Valley State Prison (KVSP), has filed two separate actions in this Court, which were filed under two different case numbers.

In Case No. C 10-3802 CW (PR), Petitioner filed a civil rights complaint form naming the United States District Court for the Eastern District of California as Defendant. In the caption, Petitioner indicates the case number of his habeas corpus action filed in the Eastern District, Case No. 07-767 AWI DLB HC. Because it was filed on a civil rights complaint form, it was opened as a civil rights action in this Court. Petitioner also filed a motion for leave to proceed in forma pauperis (IFP); however, he did not

1 sign the motion. His complaint form is deficient because he has  
2 not answered any of the questions on the form aside from his "Place  
3 of Confinement" and the "Parties." Petitioner does not allege that  
4 he is challenging the conditions of his confinement because he has  
5 left blank the entire third page of the form relating to the  
6 "Statement of the Claim" and "Relief." Instead, he attaches two  
7 typewritten pages addressed to: (1) "Judge Dennis L. Beck" of the  
8 Eastern District; and (2) "the State board." A review of the  
9 typewritten pages reveals that Petitioner is confused about the  
10 status of his petition in the Eastern District. He seems to  
11 believe that the Eastern District Court "lost" his petition;  
12 however, the Eastern District's electronic database reveals it was  
13 dismissed almost three years ago.<sup>1</sup>

14 In Case No. C 10-3803 CW (PR), Petitioner filed a habeas  
15 petition form naming "A. Hedgpeth" and "Warden Harrington" as  
16 Respondents. Again, Petitioner indicates Eastern District Case No.  
17 07-767 AWI DLB HC on the caption. He attaches the same two  
18 typewritten pages mentioned above. Petitioner has answered some of  
19 the questions on the form, but most of them remain unanswered. He  
20 claims that he is challenging his "sentence" for "seven years  
21 without a strike" and that his place of conviction and sentence was  
22 in "Fresno, CA." He also claims that he pled not guilty, had a  
23 jury trial, testified at his trial, and appealed his conviction of  
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25 <sup>1</sup> According to the Eastern District's electronic database,  
26 Case No. 07-767 AWI DLB HC ED was dismissed on December 20, 2007  
27 for failure to comply with the Eastern District Court's Order  
28 Dismissing Petition With Leave to Amend dated July 23, 2007, which  
directed Petitioner to complete the entire habeas petition form  
because he had left most of the questions on his original petition  
form unanswered.

1 sentence. After the following statement on page four: "If you did  
2 not appeal, state your reasons," he states: "The Courts of the  
3 Federal Eastern District of California, lost my case. I sent for  
4 my transcripts and materials, but the Court said they couldn't  
5 [sic] find it." (Pet. at 4.) He also marks "YES" when asked if he  
6 "previously filed any petitions, applications or motions with  
7 respect to this conviction in any court, state or federal;"  
8 however, he leaves blank the remaining sections relating to the  
9 name of court, nature of proceeding, grounds raised and result.

10 DISCUSSION

11 I. Case No. C 10-3803 CW (PR)

12 Petitioner currently has two separate actions pending,  
13 although he meant to file only one habeas action, which is evident  
14 from the fact that he indicated the same Eastern District case  
15 number on both pleading forms. The second action was opened in  
16 error when the Court received a habeas corpus petition form from  
17 Petitioner that was intended to be filed as an amended petition in  
18 his first action. Petitioner has also filed a motion for leave to  
19 proceed IFP.

20 Accordingly, the Clerk is directed to remove Petitioner's  
21 habeas corpus petition form as well as his IFP application from  
22 Case No. C 10-3803 CW (PR), and to file it as an "Amended Petition"  
23 and IFP application in his first action (Case No. C 10-3802 CW  
24 (PR)). Case No. C 10-3803 CW (PR) is DISMISSED because it was  
25 opened in error.

26 II. Case No. C 10-3802 CW (PR)

27 Because Petitioner's habeas petition filed in Case No. C 10-  
28 3803 CW (PR) is now the amended petition in Case No. C 10-3802 CW

(PR), his first action is construed as a habeas corpus action instead of a civil right action. The Clerk is directed to reclassify Case No. C 10-3802 CW (PR) as a habeas corpus action. The Clerk is also directed to substitute Warden Kelly Harrington, the current warden of the prison where Petitioner is incarcerated, as Respondent in Case No. C 10-3802 CW (PR) pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. The Court now reviews Petitioner's amended petition.

In this habeas action Petitioner seeks to challenge a conviction and sentence incurred in Fresno County. Fresno County is in the venue of the United States District Court for the Eastern District of California. Furthermore, Petitioner is incarcerated at KSVF in Kern County, which is also in the Eastern District.

Federal statute allows "the Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2241(a). A federal petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a State court is properly filed in either the district of confinement or the district of conviction. Id. § 2241(d). Where a case is filed in the wrong venue, the district court has the discretion to transfer it to the proper federal court "in the interest of justice." See 28 U.S.C. § 1406(a). The Eastern District of California is the proper venue for this action.

Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and in the interest of justice, the Clerk is ordered to TRANSFER Petitioner's first action (Case No. C 10-3802 CW (PR)) forthwith to the United States District Court for the Eastern District of

1 California.

2 All remaining motions in Case No. C 10-3802 CW (PR) are  
3 TERMINATED on this Court's docket as no longer pending in this  
4 district.

5 CONCLUSION

6 For the reasons stated above,

7 1. Petitioner's second action (Case No. C 10-3803 CW (PR))  
8 is DISMISSED because it was opened in error. The Clerk is directed  
9 to remove Petitioner's habeas corpus petition form from his second  
10 action, to file it in his first action (Case No. C 10-3802 CW  
11 (PR)), and to docket it as Petitioner's "Amended Petition." The  
12 Clerk is further directed to mark it as filed on August 26, 2010,  
13 the date it was received by the Court. The Clerk is directed to do  
14 the same for the IFP application, which was also filed on August  
15 26, 2010. No filing fee is due, and the Clerk shall close the file  
16 in Case No. C 10-3803 CW (PR).

17 2. The Clerk is directed to reclassify Case No. C 10-3802 CW  
18 (PR) as a habeas corpus action. Warden Kelly Harrington, the  
19 current warden of KVSP, the prison where Petitioner is  
20 incarcerated, has been substituted as Respondent in Case No. C 10-  
21 3802 CW (PR) pursuant to Rule 25(d) of the Federal Rules of Civil  
22 Procedure.

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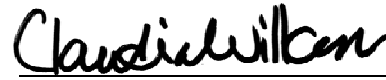
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1           3.     The Clerk is ordered to TRANSFER Case No. C 10-3802 CW  
2 (PR) to the United States District Court for the Eastern District  
3 of California. All remaining motions in Case No. C 10-3802 CW (PR)  
4 are TERMINATED on this Court's docket as no longer pending in this  
5 district.

6           IT IS SO ORDERED.

7 Dated: 9/14/2010



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ERIC WATKINS,

Plaintiff,

v.

UNITED STATES DISTRICT COURT et al,

Defendant.

Case Number: CV10-03802 CW

**CERTIFICATE OF SERVICE**

ERIC M. WATKINS,

Petitioner,

v.

A. HEDGPETH, WARDEN HARRINGTON,

Respondents.

Case Number: CV10-03803 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 14, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Eric M. Watkins D-25198  
Kern Valley State Prison  
P.O. Box 5103  
Delano, CA 93216

Dated: September 14, 2010

Richard W. Wicking, Clerk  
By: Nikki Riley, Deputy Clerk